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CHIN SWEE HEUNG & ORS v. PENTADBIR TANAH DAERAH RAUB & ORS AND ANOTHER APPLICATION

HIGH COURT MALAYA, KUANTAN
MOHD RADZI HARUN J
[JUDICIAL REVIEW NOS: CA-25-11-08-2020 & CA-25-12-10-2020]
B 5 DECEMBER 2024

Abstract – *In order to succeed in a judicial review application on grounds of impropriety or unreasonableness in the decision that is the subject matter of the judicial review application, the applicants must show that they fell within the threshold required for judicial review application. In this case, where the applicants were challenging the decision in issuing eviction notices by State Authority on the grounds that the lands have been occupied illegally, the applicants must show that they had legal or equitable rights to occupy the same and that the decision against them were malicious.*

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ADMINISTRATIVE LAW: *Judicial review – Application for – Application against decision to evict applicants from lands – Whether decision tainted with illegality, irrationality or mala fide – Whether applicants squatters simpliciter – Whether had legal rights over lands – Whether non-response by land office could be interpreted as consent to stay on land – Whether length of stay on land changed status as illegal occupants - Whether eviction in breach of applicants' substantive legitimate expectation – Whether applicants ought to be compensated – Whether there was impropriety or unreasonableness in decision and decision-making process*

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ADMINISTRATIVE LAW: *Judicial review – Application for – Application against decision to evict applicants from lands – Whether decision amenable to judicial review – Whether applicants mere busybodies or persons adversely affected by decisions – Whether judicial review can only be applied after exhaustion of all available remedies – Whether eviction process must be completed before application filed – Whether application for court to determine correctness of notices or questioning decision-making process – Whether questioning of decision-making process permissible – Whether prayers correct in law*

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ADMINISTRATIVE LAW: *Judicial review – Locus standi – Application against decision to evict applicants from lands – Whether applicants had locus standi – Test for locus standi – Whether applicants adversely affected – Whether applicants had real and genuine interest in subject matter – Whether applicants directly aggrieved by impugned decisions – Whether possessed locus standi – Rules of Court 2012, O. 53 r. 2(4)*

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I

There were two judicial review ('JR') applications filed by the applicants who occupied certain portions of land in or around Sungai Ruan, Sungai Chalit, Sungai Klau dan Tranum, Mukim Gali, District of Raub and Tras, Mukim Tras, District of Raub in Pahang ('affected lands'). The applicants' pleadings were, *inter alia*, that (i) over the years the majority of the applicants made several attempts to apply to the relevant State Authorities ('SA') for licences for temporary occupation and permission to use and/or occupy and/or for alienation of the affected lands. The SA had rejected the applications; (ii) since 2000, the applicants began to cultivate durian trees, mainly of the prized Musang King variety; (iii) around June 2020, the SA awarded to the sixth respondent, Royal Pahang Durian Resources PKPP Sdn Bhd ('R6'), a lease and land use rights for 5,357 acres of land in the district of Raub for a period of 30 plus 30 years, which covered the affected lands; (iv) R6 subsequently announced the details of a proposed scheme called 'land legalisation scheme', intended to take over the affected lands but continued to require the applicants to farm the crops that they had cultivated and pay the applicants a wholly inadequate sum of money by fixing the prices and imposing a sole buyer to whom the applicants could sell their fruits; (v) the first respondent, Pentadbir Tanah Daerah Raub (R1), and the second respondent (R2), Pengarah Perhutanan Negeri Pahang, respectively issued various notices to the applicants seeking to evict them from the affected lands by giving the applicants a period of either seven days or 30 days to do so, and to demolish any structures erected as well as taking possession of all trees planted on the affected lands; (vi) the notices to evict made no reference to the land legalisation scheme. But the date of expiry of the first set of the notices to evict issued by R1 corresponded with the expiry date of the offer of the land legalisation scheme by R6. Alleging that the impugned decisions by the respondents were infected with illegality, irrationality and unreasonableness and procedural impropriety, the applicants sought the following reliefs: (i) *certiorari* to quash the notices of eviction issued by the R1, R2 and the fifth respondent, Perbadanan Kemajuan Pertanian Negeri Pahang ('R5'), any decisions to evict the applicants or any decision to destroy, acquire or use the durian trees on the affected lands and any decision to award lease and land use rights to R6; (ii) prohibition order to restrain R1 or the third respondent, the Pahang SA ('R3'), from alienating or granting any lease to R6 except to the applicants or their nominees; (iii) *mandamus* to compel R1 or R2 to grant leases for the affected lands to the applicants or their nominees; and (iv) damages or adequate compensation.

R6 raised preliminary issues and objections that the JR application should be dismissed *in limine* on the grounds that: (i) the applicants lacked the necessary *locus standi* to commence the JR due to their status as illegal squatters; (ii) the impugned decisions were not amenable to JR due to the following reasons: (a) failure of the applicants to exhaust domestic remedies available to them under the National Land Code ('NLC') and the National

Forestry Act 1984 ('NFA'); (b) there was no decision capable of being reviewed as the eviction process consequent to the issuance of the eviction notices by the R1, R2 and R5 had not been completed, which rendered the JR application premature; and (c) even if the eviction process was completed, this civil court could not interfere and lacked jurisdiction to make any orders or grant any reliefs as prayed by the applicants as the eviction notices carried penal consequences, and the penalties provided in the eviction notices formed part of the enforcement of criminal law, which was beyond the jurisdiction of this civil court; (iii) the JR application was procedurally improper as R4 was not a proper nor a necessary party to the proceeding, instead the Perbadanan Setiausaha Kerajaan Negeri Pahang ('PSK'), which was a material party was not made a party; and (iv) the relief sought against R6 in the form of a *certiorari* to quash the award of lease granted to R6 to allow the implementation of the land legalisation scheme was premature and incapable of being ordered by this court.

Held (dismissing JR applications):

(1) The applicants must satisfy the threshold in O. 53 r. 2(4) of the Rules of Court 2012 ('ROC'), that they were adversely affected by the impugned decision. At the leave stage, the High Court dismissed the leave application. However, the decision was reversed by the Court of Appeal ('COA') and the COA clearly instructed this court to proceed with the substantive hearing of the JR application to determine the issues raised by the applicants, having been satisfied that all the applicants were not busybodies, and were persons adversely affected by the impugned notices. This court was bound by the decision and instructions of the COA and hence, R6's preliminary objection on this issue was dismissed (paras 22 & 28-32)

(2) In order to satisfy the *locus standi*, the applicants were only required to show that they were adversely affected by the impugned decisions. Whether an applicant is adversely affected is a question for the court to determine, having regard to the factual and legal matrix of the grievance. In so doing, the court will adopt a broad and flexible approach. Order 53 r. 2(4) of the ROC is not to be construed *in vacuo* but the words 'adversely affected' in this provision have to be construed in the context of the particular legislation that is under scrutiny. The applicants had real and genuine interest in the subject matter and possessed the *locus standi* as they were directly aggrieved by the impugned decisions. They were entitled to move this court to hear their complaints *vide* their applications. (paras 36 & 40)

(3) Section 418 of the NLC is specific on the categories of the persons against whose decision are appealable. Any person who is dissatisfied with any decision made by the authority should appeal against that decision in the manner prescribed in the applicable law. Although the

applicants could have chosen to appeal against the decision of the SA and the complaints against R2-R6 could not come within the purview of s. 418 of the NLC, there is nothing in the Courts of Judicature Act 1964 and the Rules of Court 2012 providing that JR can only be applied after the exhaustion of the available remedies. When the applicants are aware on the futility of the alternative remedies, they could choose to apply for JR, subject to fulfilment of all the legal thresholds governing JR. (paras 44-46)

(4) The JR was attacking the impugned decisions of R1, R2 and R5 that led to the issuance of the impugned notices. There was no necessity for the eviction process to be completed before the applicants could bring this action. The applicants' questioning of the decision and the decision-making process of R1, R2 and R5 in the issuance of the eviction notices were therefore correct in law and were amenable to JR. (paras 52 & 53)

(5) An exercise of power in the course of a criminal investigation is not open to judicial review. However, the applicants' JR was not for the court to determine the correctness or otherwise of the notices, neither was it asking the court to declare that the applicants did not commit any criminal wrongdoing and hence, the notices should be quashed. The applicants' JR was questioning the decision-making process that were involved which resulted in the issuance of the notices. Such questioning was clearly permissible in law. Even if the court allowed the JR and allowed the applicants' relief to quash the eviction notices, that did not in any manner meant that this court determined that no prosecution could be initiated against the respondents. (paras 55, 58 & 61)

(6) There was no necessity for the PSK to be made a party to this proceeding. The decisions that were the subject of this review stemmed from the policy decisions of R3 and R4. The actions of PSK were subject to the directions, instructions and policy decisions of R3 and R4 and, could not act on its own volition. R3 and R4 were more than sufficient to defend the impugned decisions against the applicants' action. Therefore, the applications should not be dismissed on ground of irregularity and misjoinder of PSK as a party to this proceeding. (paras 63 & 64)

(7) The applicants' prayer for a *certiorari* to quash the lease granted to R6 was correct. The State Government had made its policy decision to grant R6 the lease over the lands that covered the affected lands. R6 had the beneficial interest in the affected lands. Even if this court decided to allow the JR and ruled that the *certiorari* against R6 could not be ordered as R6 had not been formally granted the lease, all that was needed to be done by this court was not to issue the *certiorari*. That,

however, would not bar the applicants from proceeding with their JR applications. Hence, the preliminary objections raised by R6 were dismissed (paras 18, 66 & 67)

(8) The applicants had no legal rights and could not succeed in their claims wherever because they were squatters simpliciter. There was not an iota of evidence to show recognition, approval, consent, permission, acquiesce – either expressly or impliedly, by conduct, oral or in writing – that the SA allowed their presence on the land over the years. The silence on the part of the Land Office to respond to their letters and applications could not *per se* legally tantamount to consent or permission or acquiesce as such. The fact that the majority of the applicants had stayed and worked on the affected lands for over 60 years, did not in any manner changed the fact that they were squatters. They had also committed criminal wrongdoings for so long as they remained on the land without permission of the rightful owner. The applicants' claims of reasonable expectation was also unsustainable as the doctrine of legitimate expectation cannot create a right when such right does not exist. (paras 81, 85, 86, 92 & 93)

(9) As the applicants were squatters simpliciter, the SA need not do anything at all to compensate them in any manner. But the SA, through R5 and R6, had come out with the land legalisation scheme. There was not an iota of evidence that the land legalisation scheme was tainted with *mala fide* and bad faith. R1-R6 had not acted irrationally and disproportionately at any time throughout their decision-making process constituting the lease granted to R6 and the conception of the land legalisation scheme. (paras 97, 102 &105)

(10) The legality of the notices issued by R1, R2 and R5 could not be questioned as it was issued consequent to the correct provisions of the law. Even if R1 and R2 decided to dispense with the notices and proceeded to enter the land and forcefully to turn the applicants out of the land, the legality of such action was beyond question as the applicant were squatters simpliciter with no legal rights. Hence, the decision to issue the eviction notices were not in any manner tainted with illegality, irrationality or *mala fide*. There was no impropriety or unreasonableness in the decision and the decision-making process when the notices were issued. (paras 107, 113, 110 & 117)

Case(s) referred to:

Abadi Motor Sdn Bhd v. Ewwa Mohd Yusoff & Ors [2019] 1 CLJ 234 HC ***(dist)***

AG Mohd Tahir Mohd Talib & Anor v. Suruhanjaya Pencegah Rasuah Malaysia & Ors [2018] CLJU 1093; [2018] 1 LNS 1093 HC ***(dist)***

Bohari Jaya & Ors v. Naim Land Sdn Bhd & Ors [2016] 4 CLJ 353 CA ***(refd)***

Bohari Taib v. Pengarah Tanah Dan Galian Selangor [1991] 1 CLJ 647; [1991] 1 CLJ (Rep) 48 SC ***(dist)***

Bumiputra-Commerce Bank Bhd v. Augusto Pompeo Romei & Anor [2014] 6 CLJ 17 CA
Chong Wooi Leong v. Lebbey Sdn Bhd [1998] 3 CLJ 685 CA ***(foll)***
Datuk Bandar Kuala Lumpur v. Perbadanan Pengurusan Trellises & Ors And Other Appeals [2023] 5 CLJ 167 FC ***(refd)***
Government Of Malaysia & Anor v. Jagdis Singh [1987] 1 CLJ 451; [1987] CLJ (Rep) 110 SC ***(dist)***
Government Of Malaysia v. Lim Kit Siang & Another Case [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63 SC ***(dist)***
Government Of The State Of Sarawak v. Lah Anyie & Ors [2013] 6 CLJ 133 CA ***(refd)***
Kerajaan Negeri Johor & Anor v. Adong Kuwau & Ors [1998] 2 CLJ 665 CA ***(refd)***
Land Executive Committee Of Federal Territory v. Syarikat Harper Gilfillan Bhd [1980] CLJU 150; [1980] 1 LNS 150 FC ***(dist)***
Lim Cho Hock v. Government Of The State Of Perak, Menteri Besar, State Of Perak And President, Municipality Of Ipoh [1980] CLJU 43; [1980] 1 LNS 43 HC ***(refd)***
Nik Elin Zurina Nik Abdul Rashid & Anor v. Kerajaan Negeri Kelantan [2024] 3 CLJ 323 FC ***(refd)***
North East Plantations Sdn Bhd lwn. Pentadbir Tanah Daerah Dungun & Satu Lagi [2011] 4 CLJ 729 FC ***(refd)***
North Plaza Sdn Bhd v. United Securities Sdn Bhd [2010] 1 CLJ 470 CA ***(refd)***
Peguam Negara Malaysia v. Chin Chee Kow & Another Appeal [2019] 4 CLJ 561 FC ***(refd)***
Perbadanan Pengurusan Trellises & Ors v. Datuk Bandar Kuala Lumpur & Ors [2021] 2 CLJ 808 CA ***(foll)***
Petroliam National Bhd v. Nik Ramli Nik Hassan [2003] 4 CLJ 625 FC ***(refd)***
R Rama Chandran v. Industrial Court Of Malaysia & Anor [1997] 1 CLJ 147 FC ***(refd)***
Sidek Hj Muhamad & Ors v. The Government Of The State Of Perak & Ors [1982] CLJ 244; [1982] CLJ (Rep) 321 FC ***(foll)***
Suprintendent Of Lands & Survey, Bintulu v. Nor Anak Nyawai & Ors And Another Appeal [2005] 3 CLJ 555 CA ***(refd)***
Tan Bun Teet & Ors v. Menteri Sains, Teknologi Dan Inovasi Malaysia & Ors [2013] 3 CLJ 1115 CA ***(refd)***
Tan Sri Hj Othman Saat v. Mohamed Ismail [1982] CLJU 2; [1982] 1 LNS 2 FC ***(foll)***
Tekad Urus Sdn Bhd v. Penduduk-Penduduk Yang Menduduki Kawasan Yang Dipanggil Desa Perwira [2004] 2 CLJ 516 CA ***(dist)***
Tengku Muhammad Fakhry Petra Ibni Sultan Ismail Petra v. Yang Maha Mulia Pemangku Raja Kelantan & Ors [2010] CLJU 1390; [2010] 1 LNS 1390 HC ***(refd)***
Veerasingam Subramaniam & Ors v. Datuk Bandar Kuala Lumpur [2012] 3 CLJ 1041 HC ***(refd)***
YKK (Malaysia) Sdn Bhd v. Pengarah Tanah Dan Galian Johor [2021] 8 CLJ 179 FC ***(refd)***

Legislation referred to:
Federal Constitution, arts. 5, 6, 8, 13
National Forestry Act 1984, s. 32
National Land Code, ss. 124, 418, 425, 426A
National Language Acts 1963/67, s. 8
Rules of Court 2012, O. 53 rr. 2(4), 3(2), (6), O. 92 r. 1

For the applicants - Brenda Siva, Siew Choon Jern, Chen Chiu Hua & Lim Pit Feng; M/s Douglas Yee
For the 1st-4th respondents - Saiful Edris Zainuddin, Dorah Abdul Kadir, Abdul Hafiz Razat & Fatin Nur Syahirah Abdul Rashid; Pahang, SLO

For the 5th respondent - Mohd Yazid Mustafa, Mohd Najid Husain & Nornajihah Ahmad Nadjemudin; M/s Mohd Najid & Partners
For the 6th respondent - Cecil Abraham, Sunil Abraham, Nor Muzalifah Shabudin, Mohd Irwan Ismail &d Yap Jing Wen; M/s Cecil Abraham & Partners

Reported by S Barathi

JUDGMENT

Mohd Radzi Harun J:

Introduction

[1] There were two judicial review ('JR') applications before this court in Suit CA-25-11-08-2020 ('Suit 11') and Suit CA-25-12-10-2020 ('Suit 12'), both with similar prayers, and against the same respondents.

[2] This court had dismissed both applications. Numerous applicants in both applications appealed against that decision. There were altogether four appeals filed by these applicants, two in each suit.

[3] All the respondents registered a list of preliminary objections, all of which were dismissed by this court. Only the sixth respondent appealed against that dismissal, by filing two appeals in total, one in each suit.

[4] The factual background and the impugned decisions that formed the subject matter of the JR in both suits are the same. The respondents in both suits, and the prayers and the reliefs sought in both suits are also the same. Counsels for all parties filed their respective submissions that were mirrored in both suits. During the hearing of the substantive JR applications, all counsels agreed that although they only argued and submitted in Suit 11, the arguments and submissions *ipso facto* were applicable to Suit 12. In the same manner, all counsels agreed that this court's decision that was read out only for Suit 11 was similarly applicable to Suit 12.

[5] Based on the above, only these single grounds of judgment is prepared for all six appeals. Part A sets out my grounds for the appeal by the sixth respondent on the dismissal of its preliminary objections. Part B sets out my grounds for the appeals by the relevant applicants on the substantive JR applications.

The Parties

[6] At the time when the two JR applications were filed in August and October 2020, there were 205 Applicants in total, 111 applicants in Suit 11 and 94 applicants in Suit 12. On various dates in 2021 and 2022, seven applicants in Suit 11 and 12 applicants in Suit 12 filed notices of discontinuance. Thus, when the JR applications were heard by this court, there were 186 applicants in total, 104 in Suit 11 and 82 in Suit 12. Out of that 186 applicants, 145 appealed against this court's decision.

[7] In Suit 11, out of the 104 applicants, a total of 87 applicants appealed against this court's decision. Six filed appeal in encl. 142 – applicants nos. 3, 5, 30, 53, 57, 67. While another 81 filed their appeal in encl. 156 – applicants nos. 2, 4, 5, 8, 10, 11, 12, 13, 14, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 29, 31, 32, 33, 35, 36, 38, 39, 42, 43, 44, 45, 46, 47, 49, 50, 51, 52, 55, 56, 58, 59, 60, 61, 62, 64, 65, 66, 68, 69, 70, 72, 73, 74, 76, 77, 78, 79, 80, 81, 82, 84, 85, 86, 87, 88, 89, 90, 91, 94, 95, 96, 98, 99, 100.

[8] In Suit 12, out of the 82 applicants, a total of 58 appealed against this court's decision. 50 filed appeal in encl. 180 – applicants nos. 3, 7, 11, 12, 13, 14, 16, 17, 19, 20, 21, 22, 27, 30, 31, 33, 36, 38, 39, 41, 42, 43, 44, 46, 47, 48, 49, 50, 55, 57, 61, 62, 63, 64, 65, 68, 70, 71, 72, 74, 75, 78, 80, 83, 85, 86, 87, 88, 91, 94. And the other eight filed their appeal in encl. 191 – applicants nos. 28, 25, 30, 35, 46, 47, 61, 72.

[9] All six respondents named in both Suits 11 and 12 lodged a list of preliminary objections, and all were dismissed by this court. Only the sixth respondent appealed against the dismissal.

Background

The Applicants

[10] In their O. 53 statements, the applicants pleaded that:

(i) the applicants in both Suits 11 and 12 are all Malaysian citizens who have occupied certain portions of lands in or around Sungai Ruan, Sungai Chalit, Sungai Klau and Tranum, Mukim Gali, District of Raub, and Tras, Mukim Tras, District of Raub in Pahang ('the affected lands');

(ii) they had occupied the affected lands since 1961 with leave and license, either express or implied, of the relevant authorities of the State of Pahang;

(iii) there is evidence before this court showing that over the years the majority of the applicants made several attempts to apply to the relevant State Authorities for licences for temporary occupation and permission to use and/or occupy and/or for alienation of the affected lands. The State Authorities had rejected the applications;

It was shown to this court during the hearing of the application that one of the applicants had successfully obtained a positive reply from the State Authority in that he was granted an approval for land use subject to the fulfilling of the conditions stipulated in the approval letter. When questioned by this court whether the said applicant fulfilled the conditions, the applicants' counsel could not provide any evidence to show such fulfilment. As the said approval indicated

clearly the timeline for the conditions to be fulfilled failing which the approval would lapse, and that there was no evidence shown to this court that the stipulated conditions had been fulfilled within the said timeline nor was there any extension of time for the same, it is safe to assume that the approval had lapsed;

(iv) since the year 2000 the applicants began to cultivate durian trees, mainly of the prized Musang King variety;

(v) around June 2020, the State Authority awarded to the sixth respondent (R6) a lease and land use rights for 5,357 acres of land in the district of Raub for a period of 30 plus 30 years. This area covers the affected lands;

(vi) on 10 July 2020, R6 announced the details of a proposed scheme called "land legalisation scheme".

(vii) the land legalisation scheme is intended to take over the affected lands but continue to require the applicants to farm the crops that they have cultivated and pay the applicants a wholly inadequate sum of money by fixing the prices and imposing a sole buyer to whom the applicants can sell their fruits;

(viii) the terms of the proposed land legalisation scheme include:

(a) R6 would only grant sub-leases or sub-land use rights of 10 + 10 + ten years to the applicants who accept the said scheme;

(b) the applicants would be bound to sell all of their durian harvest to an entity called Royal Pahang Durian Export Sdn Bhd at a fixed, pre-determined price as follows:

(1) RM30 per kg for the first 2,000kg per acre of Grade A Musang King durian fruit for the years 2021 and 2022;

(2) any excess beyond 2,000kg per acre will be purchased at RM40 per kg;

(3) grade B Musang King durian fruit would be priced at RM18 per kg;

(4) any excess over 2,000kg per acre will be purchased at RM21 per kg;

(5) after 2022, the prices have not been fixed and would be purchased at "mutually agreed" prices but subject to yearly revisions within an agreed price range;

(6) Royal Pahang Durian Export Sdn Bhd would make payment of RM10 per kg special levy to R6 on behalf of the applicants, as consideration for their usage of the lands.

(ix) the first respondent (R1) and second respondent (R2) respectively issued various notices to the applicants seeking to evict them from the affected lands by giving the applicants a period of either seven days or 30 days to do so, and to demolish any structures erected as well as taking possession of all trees planted on the affected lands (see exh. A1 of encl. 3 and exh. B1 of encl. 10);

(x) the said notices to evict make no reference to the land legalisation scheme. But the date of expiry of the first set of the notices to evict issued by R1 does correspond with the expiry date of the offer of the land legalisation scheme by R6 to the applicants. At the same time, R1, R2 and the third respondent (R3) had in their affidavits admitted that the issuance of the notices to evict is pursuant to the award of the lease and land use rights of the affected land to R6 as well as the implementation of the land legalisation scheme;

(xi) there have been no discussions or negotiations on the terms or details of the land legalisation scheme. Any of the applicants wishing to partake in the said scheme shall agree to the said scheme and its terms in its entirety;

(xii) the aforesaid decisions by the respondents, in particular the first to fifth respondents, taken together or separately, are decisions amenable to judicial review, as the decisions represent, *inter alia*:

(a) an attempt by the respondents to unilaterally deprive the applicants of any rights acquired or vested in them without compensation or without adequate compensation, and to use or convert those same property rights and all the improvements upon them to the benefit of the respondents; and

(b) the implementation of the land legislation scheme through threat of imminent eviction and/or demolition of structures on the affected lands.

The Respondents

[11] The first-fourth respondents require no introduction.

[12] The fifth respondent (R5) was established on 15 November 1969 pursuant to the Emergency Ordinance Pahang (No. 2) 1969, ratified by the State Assembly of Pahang on 1 April 1971. It is vested with the obligations and duties to enhance and facilitate efforts to develop the economy and society, in particular the rural development, in the State of Pahang.

[13] Royal Pahang Durian Resources Sdn Bhd ('RPDR') was incorporated on 24 January 2017. On 14 January 2020 R6 was incorporated as a special purpose vehicle company, with the main purpose of implementing the land

legalisation scheme. On 15 January 2020, Royal Pahang Durian Export Sdn Bhd was incorporated. In March 2020, R5 subscribed 25% shares in R6 and RPDR holds 75% shares in R6.

Subject Matter Of The JR

[14] There are five decisions that are the subject matter of this judicial review as set out in the JR applications, the applicants' O. 53 statement and affidavits:

(i) the decision by R1 to issue the eviction notices on land belonging to R4 located within the area of Sg Chalit, Sg Klau, Sg Ruan, and Tranum in Mukim Gali, Daerah Raub and within the area of Tras, Mukim Tras, Daerah Raub, pursuant to ss. 425 and 426A of the National Land Code ('NLC');

(ii) the decision by R2 to issue the eviction notices on land within the Forest Reserve pursuant to s. 32 National Forestry Act 1984;

(iii) the decision by R3 on 26 April 2020 to award a lease and land use rights of 5,357.2 acres of land in Raub District (which include the affected lands that are the subject of the notices of eviction) to R6;

(iii) the decision by R4 as announced by the YAB Menteri Besar on 9 July 2020 and as announced by R6 on 10 July 2020 on the land legalisation scheme which involves the said award of the lease and land use to R6, subleasing of the affected lands to the applicants and a specific arrangements on the selling of durians by the applicants to R6; and

(v) the decision by R5 to issue notice of eviction dated 1 December 2020 with respect to land under title PN10972 Lot 17362, also pursuant to the NLC. Although the O. 53 statement and AIS in encl. 3 only referred to the notices issued by R1 and R2, the applicants' additional affidavit (encl. 10) referred to this notice issued by R5.

[15] There was another eviction notice issued by Pentadbir Tanah Maran dated 14 February 2022. This notice is not a subject of these applications.

[16] The applicants set out the following reasons as to why those decisions were illegal, irrational and unreasonable and infected with procedural impropriety:

16.1 Illegality

(i) the applicants were not in breach of s. 425 of the NLC nor s. 32 of the National Forestry Act as they occupy the affected lands with lawful authority of R1-R5;

(ii) the intended eviction of the applicants and the planned demolishment of structures and destruction of durian trees on the affected lands are in breach of substantive legitimate expectation that the applicants would be granted lease or title or interest to the affected lands;

(iii) the respondents contravened arts. 5, 6, 8, 13 of the Federal Constitution by depriving the applicants of their property in breach of law, unfairly depriving the applicants their sole means of livelihood, acquiring and using property of applicants arbitrarily without adequate compensation, and compelling the applicants to perform forced labour;

(iv) appointing R6 as the monopoly buyer to purchase the durians from the applicants at a fixed and disproportionately low price, through the land legalisation scheme is in breach of the Competition Act 2010.

16.2 Irrationality and Unreasonableness

(i) the award of the land lease and land use rights to R6, disregarding the years of occupation of the affected lands by the applicants with the express or implied consent of R1-R5, and all the efforts in improving and cultivating the durian trees by the applicants;

(ii) the creation of artificial and arbitrary market for the applicants to sell their durians through the land legalisation scheme;

(iii) the refusal of R1-R5 to alienate the affected lands to the applicants but instead forcing the applicants to take the short sub-leases through the land legalisation scheme, and (d) The short period provided in the eviction notices.

16.3 Procedural Impropriety

(i) failure to provide the applicants the right to be heard before arriving at the decisions;

(ii) failure by R1 and R3 to respond to applicants' multiple requests for lease but instead granted lease of certain lands which covers the affected lands to R6;

(iii) the time periods of 7-30 days provided in the eviction notices without taking into account that the applicants had occupied the lands for over 60 years; and

(iv) R1 and R3 in their public statements had asked the applicants to deal with R6 on matters pertaining to the land legalisation scheme amounted to excessive delegation of powers/duties.

Reliefs Sought By Applicants

[17] As the impugned decisions set out above were infected with illegality, irrationality and unreasonableness and procedural impropriety, the applicants sought for the following reliefs *vide* their JR applications:

(i) *certiorari* to quash:

(a) the notices of eviction issued by R1, R2 and R5;

(b) any decisions to evict the applicants, or any decision to destroy, acquire or use the durian trees on the affected lands;

(c) any decision to award lease and land use rights for a period of 30+30 years to R6;

(ii) prohibition order to restrain R1 or R3 from alienating or granting any lease to R6 except to the applicants or their nominees;

(iii) *mandamus* to compel R1 or R2 to grant leases for the affected lands to the applicants or their nominees; and

(iv) damages or adequate compensation.

Part A: Appeal By The Sixth Respondent On The Dismissal Of Its Preliminary Objections

[18] All six respondents raised preliminary issues and preliminary objections, all of which had been dismissed by this court. As indicated in the earlier paragraph, only the R6 appeal against that dismissal. This part deals with the preliminary objections raised by the R6 in opposition to the JR application and the reasons why this court dismissed them.

[19] R6 argued that the JR application shall be dismissed *in limine* on the following grounds:

(i) the applicants lack the necessary *locus standi* of the applicants to commence the JR due to their status as illegal squatters;

(ii) the impugned decisions are not amenable to JR due to the following reasons:

(a) failure of the applicants to exhaust domestic remedies available to them under the National Land Code and the National Forestry Act 1984;

(b) there is no decision capable of being reviewed as the eviction process consequent to the issuance of the eviction notices by the first, second and fifth respondents have not completed, which renders this JR application premature; and

(c) even if the eviction process is completed, this civil court cannot interfere and lacks jurisdiction to make any orders or grant any reliefs as prayed by the applicants as the eviction notices carry penal consequences, and the penalties provided in the eviction notices formed part of enforcement of criminal law, which is beyond the jurisdiction of this civil court;

(iii) the JR application is procedurally improper as the R4 is not a proper nor a necessary party to the proceeding, instead the Perbadanan Setiausaha Kerajaan Negeri Pahang, which is a material party was not made a party; and

(iv) the relief sought against the R6 in the form of a *certiorari* to quash the award of lease granted to R6 to allow the implementation of the land legalisation scheme is premature ad incapable of being ordered by this court.

Issue 1: Locus Standi Of The Applicants

[20] All counsels for the respondents argued that the applicants do not possess the *locus standi* to bring this JR as they are not adversely affected by the impugned decisions and they are not aggrieved persons. I shall confine to the arguments of R6.

[21] The counsel for R6 had correctly set out the applicable principle to be adopted by this court in determining whether or not the applicants possess the *locus standi* to bring this action.

[22] The applicants must satisfy the threshold in O. 53 r. 2(4) that they are adversely affected by the impugned decision. R6's counsel had referred to the landmark decision of the Federal Court in *Datuk Bandar Kuala Lumpur v. Perbadanan Pengurusan Trellises & Ors And Other Appeals* [2023] 5 CLJ 167; [2023] 4 AMR 221; [2023] 3 MLJ 829 which had explained the workings of O. 53 r. 2. In gist, the Federal Court held that the broad approach to "adversely affected" as envisaged under O. 53 r. 2(4) must be applied in the context of the particular area of law or statute dealing with the subject matter of the case in issue.

[23] Applying this principle, R6's counsel argued that in determining whether the applicants were "adversely affected", it must be seen within the meaning of the National Land Code ('NLC'). The applicants were not the registered under the NLC as owners or lessee or licensee of the affected lands.

[24] That being the status of the applicants, R6's counsel submitted that the applicants had no legal or beneficial interest in the affected lands. The applicants cannot come within the meaning of "adversely affected" persons as envisaged under O. 53 r. 2(4) following the impugned decisions of R1, R2 and R5. Consequently, the applicants do not have *locus standi* to prosecute their complaints against the respondents *vide* the JR applications. See: *Veerasingam Subramaniam & Ors v. Datuk Bandar Kuala Lumpur* [2012] 3 CLJ 1041; [2012] 8 MLJ 479 and *North Plaza Sdn Bhd v. United Securities Sdn Bhd* [2010] 1 CLJ 470; [2010] 1 MLJ 631.

[25] R6's counsel further contended that following the undisputed fact that the applicants were present on the affected lands which were not alienated to them, nor were granted lease or any permission to use by the lawful owners, R3, R4 and R5, and that the applicants had no legal or beneficial interest in the affected lands, the applicants are illegal squatters and trespassers, without any rights either in law or equity. This court cannot

condone illegal squatters or trespassers such as the applicants, having stayed on the affected lands for decades notwithstanding, as the NLC does not recognise adverse possession. See: *Sidek Hj Muhamad & Ors v. The Government Of The State Of Perak & Ors* [1982] CLJ 244; [1982] CLJ (Rep) 321; [1982] 1 MLJ 313.

[26] R6's counsel argued further that the applicants failed to provide full and frank disclosure to this court at the leave stage. The applicants had particularly failed to provide the court with the exact coordinates and locations of the applicants on the affected lands. The purported cadastral map as shown in the applicants' affidavits failed to disclose the exact lot numbers, GPS location, exact coordinates as the maps were not surveyed plans by licensed surveyor. R6's counsel raised that during the leave proceeding, R6 and other respondents had asked for the same to be supplied but to no avail. Applicants' claims are therefore untenable for lack of credible evidence: *Suprintendent Of Lands & Survey, Bintulu v. Nor Anak Nyawai & Ors And Another Appeal* [2005] 3 CLJ 555; [2006] 1 MLJ 256; *Bohari Jaya & Ors v Naim Land Sdn Bhd & Ors* [2016] 4 CLJ 353; [2016] 4 MLJ 631.

[27] Due to the above reasons, R6's counsel argued that this court has the jurisdiction to review the leave granted for the applicants to commence their JR application. R6's counsel maintained that having shown all the above, this court shall not proceed to hear the merits of the JR application and shall dismiss the JR *in limine* as all the applicants lacked legal standing to commence their actions against the respondents.

[28] At the outset this court must set out clearly what had transpired *vis-a- vis* the leave stage. Justice Zainal Azman Ab Aziz had dismissed the leave application. Justice Zainal's grounds of judgment revealed that his main reason to disallow leave was due to his findings that all the applicants lacked *locus standi* to file the JR applications due to their status as illegal squatters on the affected lands, the same grounds intimated by the counsel for R6.

[29] On appeal, the Court of Appeal ('COA') reversed that decision and granted leave to the applicants and held uninamously:

> It is clear that the Applicants are not busy bodies and they are indeed persons who are "adversely affected" by the impugned notices.

Their Lordships further held:

> It is without doubt, that the Notices issued by the 1st Respondent (Pentadbir Tanah Daerah Raub) under s. 425 of the NLC for the Applicants to vacate the Affected Lands and the Notices issued by the 2nd Respondent (Pengarah Perhutanan Negeri Pahang) pursuant to s. 32(1) of the National Forestry Act 1984 for the Applicants to vacate the lands if implemented will cause the Applicants to lose their livelihood through durian farming.

[30] It is unequivocally clear to this court that although the COA did not make any determination on the proprietiness or otherwise of the eviction notices – as this is clearly a substantive matter to be decided by this court at the hearing of the JR proper – the COA resolved that the applicants are persons affected by the impugned decisions to issue the challenged notices.

[31] In fact, the brief decision of the COA shows that the COA was clearly instructing this court to proceed with the substantive hearing of the JR application to determine the issues raised by applicants. The COA gave that instruction after the COA was satisfied that all the applicants are not busybodies, and that the applicants are persons adversely affected by the impugned notices. That simply means that the impugned decisions are amenable to JR. Those are not matters that are non-justiciable which would have rendered them not amenable to JR as explained in *Tengku Muhammad Fakhry Petra Ibni Sultan Ismail Petra v. Yang Maha Mulia Pemangku Raja Kelantan & Ors* [2010] CLJU 1390; [2010] 1 LNS 1390.

[32] This court is bound by the decision and instructions of the COA. Thus, this court cannot become embroiled in the issue of *locus standi* and aggrieved party all over again. And on this ground alone, R6's preliminary objection on this issue should be dismissed.

[33] But for completeness, this court would deal briefly with the arguments put forth by R6's counsel.

[34] The Court of Appeal in *Perbadanan Pengurusan Trellises & Ors v. Datuk Bandar Kuala Lumpur & Ors* [2021] 2 CLJ 808; [2021] 3 MLJ 1 set out the applicable test to determine whether an applicant has a *locus standi* in a judicial review application as follows:

(i) the test whether an applicant in a judicial review application possesses the *locus standi* is set out in O. 53 r. 2(4). This provision had codified the test for *locus standi* in JR applications irrespective of the type of reliefs sought;

(ii) O. 53 r. 2(4) only requires that the applicants must show that they are adversely affected by the impugned decisions. An applicant need not establish "infringement of a private right or the suffering of special damage" but need only to show that he has a real and genuine interest in the subject matter. The applicant need only to show that he is an aggrieved person, that he has real and genuine interest in the subject matter of review. That is the test;

(iii) as O. 53 r. 2(4) does not make any distinction between threshold and substantive *locus standi*, the courts should not read into O. 53 any requirements which are simply not there.

[35] On appeal by Datuk Bandar Kuala Lumpur, the Federal Court affirmed the Court of Appeal's decision (see *Datuk Bandar Kuala Lumpur v. Perbadanan Pengurusan Trellises & Ors And Other Appeals* [2023] 5 CLJ 167; [2023] 4 AMR 221; [2023] 3 MLJ 829). The Federal Court held that:

(i) Order 53 r. 2(4) relates to threshold *locus standi*. The reference to substantive *locus standi* is, effectively a reference to the substantive merits of the case, which allows the court to review its finding on threshold *locus standi* in view of the factual and legal matrix of the entirety of the matter;

(ii) a person or entity may well fall within the broad approach to 'adversely affected' as envisaged under O. 53 r. 2(4) in the context of the particular area of law or statute dealing with the subject matter of a case, but yet may not succeed on a substantive examination of the matter because when the entirety of the legal and factual matrix is analysed, he may not have met the requirements to warrant the grant of the various remedies available under judicial review;

(iii) the law relating to *locus standi* is now settled. The majority decision of the Supreme Court in *Government Of Malaysia v. Lim Kit Siang & Another Case* [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63, no longer represents the law relating to *locus standi* or standing to sue, particularly in relation to public interest litigation. This is because the majority in *Lim Kit Siang* failed to give sufficient or adequate consideration to the judicial reasoning in the earlier Federal Court decision in *Tan Sri Hj Othman Saat v. Mohamed Ismail* [1982] CLJU 2; [1982] 1 LNS 2 and the High Court decision in *Lim Cho Hock v. Government Of The State Of Perak, Menteri Besar, State Of Perak And President, Municipality Of Ipoh* [1980] CLJU 43; [1980] 1 LNS 43; [1980] 2 MLJ 148, which was expressly accepted as good law by the Federal Court in *Othman Saat*;

(iv) as a result of *Lim Kit Siang*'s decision, public interest litigation has not been consonant with the rest of the jurisdictions in the common law or civil law world. This becomes a matter of considerable concern as it precludes or prohibits an essential feature of the Federal Constitution, namely the right of the citizenry to challenge and/or seek remedies where there are serious omissions or acts which appear to be unlawful or *ultra vires*, using the reason of a lack of standing to sue;

(v) for these reasons, the dissenting decision of the minority judges, particularly as reflected in the judgment of Abdoolcader SCJ in *Othman Saat*, reflects the correct position in law and ought to be followed; and

(vi) in the determination of whether an applicant was adversely affected is a question for the court to determine, having regard to the factual and legal matrix of the grievance. In so doing, the court will adopt a broad

and flexible approach. O. 53 r. 2(4) is not to be construed *in vacuo* but the words "adversely affected" in this provision have to be construed in the context of the particular legislation that is under scrutiny.

[36] Due to its profound significance and importance, it is necessary to regurgitate the relevant paragraphs of the Federal Court decision:

> [382] Ultimately, the basis for determining who has standing to sue is grounded on O. 53 r. 2(4) in the context of the relevant law. Standing to sue or *locus standi* is available to persons who are adversely affected within the context of that law. That is a question that is to be determined by the court on a *prima facie* examination of the grievance in the context of the legal and factual matrix of the case. It has been described in MTUC as having a genuine or real interest in the subject matter of the claim. There is no necessity to establish actual or special damage personally.
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> [393] … The words 'adversely affected' in O. 53 r. 2(4) have to be construed in the context of the particular legislation that is under scrutiny.
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> [394] This requires reference to O. 53 r. 2(4) and the law relating to it.
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> [403] Who is a person who is 'adversely affected'? There is no statutory definition of persons who fall within the category of being 'adversely affected'. It is not to be found in any statute. Instead, the rules relating to standing were and continue to be made by judges. These rules have accordingly changed and evolved over the years to meet and maintain the integrity of the rule of law, notwithstanding changes to the social structure reflected in the form of rapid industrial progress, scientific development and globalisation.
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> [404] If the term 'adversely affected' is construed narrowly, this serves to restrict the body of persons who can initiate such actions. If construed broadly it expands the body of persons who can bring such an action. The determination of whether a person is 'adversely affected' is primarily a matter of construction by the courts predicated on case law and statute as it stands presently. This requires a comprehension of how standing has been dealt with in Malaysia over the years.
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> …
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> [478] As such these respondents all fall within category of persons who are adversely affected because they are able to show a genuine interest in the subject land and its development otherwise than in conformity with the KL Structure Plan which was gazetted in 2004. There is no necessity as borne out by MTUC and QSR Brands for these parties to prove that they have suffered special detriment or prejudice which is personal to them. In point of fact the respondents can and have established this as they have all lost their rights to utilisation and enjoyment of the light, air and environment of the public space previously comprising a public park, namely Taman Rimba, which has since been alienated and now utilised for private development.

A [479] Each of the respondents has standing to sue by reason of their complaint of an encroachment into their private rights as well as their rights as a member of the public. Each of them claims a loss of a private right to enjoy their rights of access to part of what was a public park. This is a private right. They also in their capacity as members of the public who have a right to contribute towards the development of their area *via* the
B KL Structure Plan and in that context enjoy a public law right. Both appear to have been affected, for purposes of standing to sue, in the present appeals.

[37] The attitude of the courts to take liberal position when dealing with the issue of *locus standi* propounded by the minority of the Federal Court in
C *Othman Saat* and adopted with approval by the Federal Court in *Perbadanan Pengurusan Trellises*, was reaffirmed recently by the Federal Court in *Nik Elin Zurina Nik Abdul Rashid & Anor v. Kerajaan Negeri Kelantan* [2024] 3 CLJ 323. In this landmark decision on the competence of the Kelantan State assembly to legislate matters that come within the Federal List under the Federal
D Constitution, the Federal Court held that *locus standi* ought to be relaxed as much as possible to allow any public-spirited person to file a public lawsuit provided that he has some interest in the matter.

[38] The position of the applicants before this court here are similar to Mohamad bin Ismail in *Othman Saat*. Mohamad bin Ismail applied for land
E in Mersing Johor but received no response for eight years. The land was found to have been alienated to various persons, including Tan Sri Othman Saat, who was, at the material time, the Menteri Besar of Johor. Mohamad sought declarations impugning the validity of the alienation of the land. A challenge was brought against the respondent's standing to sue, amongst other
F procedural objections. The Federal Court held that Mohamad was alleging an abuse of power and sought to impugn the validity of the alienation of the land in question. The court held further that this was a case of a person having a special or substantial interest in the subject matter of the proceedings he had instituted and whose legal interest was particularly affected. The court
G declared that such situation clearly provided Mohamad the capacity to sue and there was no justification in debarring him from doing so. The Supreme Court endorsed the concept of liberalising the scope of individual standing held by Abdoolcader FCJ when he decided *Lim Cho Hock*. As I had stated earlier, the decision in *Othman Saat* has been declared by the Federal Court in *Perbadanan Pengurusan Trellises* as the law relating to *locus standi* now.
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[39] It would follow from the analysis above that all the applicants here do enjoy standing to sue. The applicants had occupied the affected land, allegedly illegally – the determination of this status would be dealt with at the substantive stage – but the impugned decisions adversely affected them
I by the appropriation of the affected lands to R6. They have a genuine interest in such appropriation as they had been applying for the same over the years. There is no necessity for the applicants to prove that they have suffered special detriment or prejudice which is personal to them.

[40] That, and coupled with the decision of the COA when allowing the applicants' appeal for leave, I am satisfied that the applicants had real and genuine interest in the subject matter. The applicants possess the *locus standi* as they are directly aggrieved by the impugned decisions. They are entitled to move this court to hear their complaints *vide* their applications.

[41] As I had ruled that the applicants are cloaked with the *locus standi*, this court must proceed to determine the JR application having seised with the proper jurisdiction, as decided by the COA in *Bumiputra-Commerce Bank Bhd v. Augusto Pompeo Romei & Anor* [2014] 6 CLJ 17; [2013] 7 MLRA 693; [2013] MLRAU 421; [2014] 3 MLJ 672.

Issue 2: Impugned Decisions Not Amenable To JR Because Of Failure Of Applicants To Exhaust Domestic Remedies

[42] The sixth respondent argued that the applicants should first exhaust the statutory remedy available to them under s. 418 of the NLC by filing an appeal to the High Court against the impugned decisions. Unless the applicants can show exceptional circumstances barring them from filing the appeal, they cannot take the short-cut route of filing the JR applications until they had exhausted the available appeal remedy: *Land Executive Committee Of Federal Territory v. Syarikat Harper Gilfillan Bhd* [1980] CLJU 150; [1980] 1 LNS 150; [1981] 1 MLJ 234, *Government Of Malaysia & Anor v. Jagdis Singh* [1987] 1 CLJ 451; [1987] CLJ (Rep) 110.

[43] This court cannot agree with the reading of the decisions in the above cases by the learned counsel for R6. The action in issue in *Syarikat Harper Gilfillan Berhad* is for a declaration that conversion is unnecessary before sub-division. Clearly, that is an issue of law by virtue of s. 124 of the NLC. As soon as the land office or the State Authority committed error in the interpretation of that provision, the aggrieved party has a right of appeal by virtue of s. 418 to the High Court. That is the remedy that cannot be skipped in any manner. That was the decision in that case. *Jagdis Singh* was a case pertaining to the income tax assessment. The court decided clearly that the Income Tax Act provides that any person aggrieved against a decision of the Income Tax Director General shall file their complaints to question the assessment to the Special Commissioner of Income Tax. One cannot skip that domestic remedy and come straight to the court as it is a statutory requirement. Both decisions are therefore clearly distinguishable to the facts, situation and issues raised by the applicants here.

[44] Apart from that, any person dissatisfied with any decision made by the authority should appeal against that decision in the manner prescribed in the applicable law. In this instance, the appellants could have chosen to appeal against the decision of the State Authority to grant the lease to R6 and against the issuance of the eviction notices. The rationale for the applicants not doing so is no-brainer. Section 418 of the NLC is specific on the categories of the

persons against whose decision are appealable. The applicants' complaints against R2-R6 in this JR therefore cannot come within the purview of s. 418 of the NLC.

[45] Even so, there is nothing in the Courts of Judicature Act and the Rules of Court 2012 providing that JR can only be applied after the exhaustion of the available remedies. When the applicants are aware on the futility of the alternative remedies, they can choose to apply for JR. Of course, to begin such a charge, they must fulfil all the legal thresholds governing JR.

[46] Based on the above, I rule that this objection holds no merit.

Issue 3: The Impugned Decisions Are Not Amenable To JR As There Is No Decision Capable Of Being Reviewed As Yet

[47] The third preliminary objection by R6 was that the impugned decisions are not amenable to JR as there is no decision capable of being reviewed as yet. This is due to the fact that the eviction process consequent to the issuance of the eviction notices by the first, second and fifth respondents has not completed, which renders this JR application premature. The notices at that stage are therefore not decisions amenable to JR.

[48] This court agrees with learned counsel for R6 to the extent that the R1, R2 and R5's eviction notices were issued in exercise of their administrative and enforcement powers under ss. 425 and 426A of the NLC and s. 32 of the National Forestry Act 1984 respectively. The notices were not issued pursuant to any legal requirements but constitute warnings to the applicants to vacate the affected lands, failing which the applicants would face the consequences as set out in the notices. This was not disputed by the applicants' counsel.

[49] In essence, R1 and R2 could have opted to proceed with actions as allowed under the NLC and the Forestry Act respectively against the appellants without any notice. Instead, R1 and R2 issued the notices which was meant to notify the applicants of their illegal actions and the repercussions awaiting them if they continue to defy the law. The notices were therefore issued to allow the applicants right to be heard.

[50] This court agrees that it is not mandatory for those notices to be issued as a precursor to any actions under the relevant provisions of the NLC and the Forestry Act.

[51] However, the JR is questioning the legality of the decision of R1 and R2 to issue the notices, not the legality of their notices. The questioning was grounded on the reasons as I had summarised earlier.

[52] The JR is attacking the impugned decisions of R1, R2 and R5 that led to their issuance of the impugned notices. There is no necessity for the eviction process to be completed before the applicants can bring this action.

In fact, if the applicants were to wait until that process is completed, their actions may fail for non-compliance with the requirement under O. 53 r. 3(6) that they shall file their application promptly and within three months from the date the grounds of application first arose or when the decision was first communicated to them.

[53] The applicants' questioning of the decision and the decision-making process of R1, R2 and R5 in the issuance of the eviction notices are therefore correct in law and are amenable to JR. This objection is overruled.

Issue 4: The Eviction Notices Issued By R1 And R2 Were Pursuant To Criminal Offences And Are Not Amenable To JR

[54] Another preliminary objection raised by R6 was that even if the eviction process is completed, this civil court cannot interfere and lacks jurisdiction to make any orders or grant any reliefs as prayed by the applicants. This is because the eviction notices carry penal consequences, and the penalties provided in the eviction notices formed part of an enforcement of criminal law, which is beyond the jurisdiction of this civil court.

[55] I agree that it is trite law that an exercise of power in the course of a criminal investigation is not open to judicial review. To hold otherwise would be exposing the criminal investigative process of all law enforcement agencies in the country to constant judicial review which surely could not have been the intention of Parliament.

[56] This court, however, cannot agree with the contention of R6's counsel on this point citing the decisions of the High Courts in *AG Mohd Tahir Mohd Talib & Anor v. Suruhanjaya Pencegah Rasuah Malaysia & Ors* [2018] CLJU 1093; [2018] 1 LNS 1093 and *Abadi Motor Sdn Bhd v. Ewwa Mohd Yusoff & Ors* [2019] 1 CLJ 234; [2019] 9 MLJ 18. In *AG Mohd Tahir*, the court held that it cannot allow the applicant's attempt through his JR application to quash criminal charges preferred against him by the respondent. In *Abadi Motor*, the applicant filed a JR against a compound it paid to the customs under the Customs Act, and seek the court to quash that compound order.

[57] The applications in both instances are so glaringly impermissible in law. *AG Mohd Tahir* and *Abadi Motor* were decided on an entirely different spectrum than the action brought before this court by the applicants. Both decisions can be distinguished and cannot apply to the facts and circumstances of the matter before this court.

[58] The applicants' JR was not for this court to determine the correctness or otherwise of the notices, neither it was to ask this court to declare that the applicants do not commit any criminal wrongdoing, and hence the notices shall be quashed. The applicants' JR was questioning the decision-making process that were involved which resulted in the issuance of the notices. Such questioning is clearly permissible in law.

[59] Without the need to dwell too much into the subject matter of whether the prerogative decision, such as the exercise of the prerogative power of the Attorney General is subject to review, the law as it stand now is as laid down by the Federal Court in *Peguam Negara Malaysia v. Chin Chee Kow & Another Appeal* [2019] 4 CLJ 561; [2019] 3 MLJ 443. The Federal Court unanimously decided that the answer to that question now is in the affirmative. The court held:

> [57] With respect, we are unable to agree with the learned SFC that the orthodox common law immunity from judicial review of the AG's prerogative powers laid down in the Gouriet's case is still good law in view of the House of Lords decision in the GCHQ's case. The judgment in the Gouriet's case is a reflection of past judicial refusal to enquire into the way in which a prerogative power had been exercised. With the progressive development of judicial review, the courts have been more willing to review the exercise of discretionary power, whether derived from statute or a prerogative power.
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> [77] Reverting back to our present appeals, we have carefully considered the judgment of the Court of Appeal in Appeal No. 58 while keeping in mind the principles of law on the subject as propounded by the courts in other jurisdiction. We found there was no flaw in its reasoning in holding that the power of the AG to give or refuse consent under s. 9(1) of Act 359 is amenable to judicial review. We are in total agreement with the Court of Appeal's reasoning as alluded to earlier in para.
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> [81] Before concluding the present appeals, we would like to reiterate the important pronouncement in *Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case* [2017] 5 CLJ 526; [2017] 3 MLJ 561. In this case, the Federal Court emphatically declared that the power of judicial review "cannot be changed or altered by Parliament by way of a constitutional amendment". The court further stated, "The power of judicial review is essential to the constitutional role of the courts, and inherent in basic structure of the constitution". The Federal Court's reassertion of constitutional judicial power and its status as superior court meant that the power of the AG to grant or refuse consent under s. 9(1) of Act 359 is amenable to judicial review.

[60] I, therefore, rule that this objection holds no merit and is dismissed.

[61] However, this court at the point when it dismissed this preliminary objection had pronounced very clearly that even if this court allows this JR and allows the applicants' relief to quash the eviction notices, that does not in any manner means that this court determines that no prosecution can be initiated against the respondents. That is certainly not within the powers of this court to decide. It clearly belongs to the realm of the Public Prosecutor and stand separately from any orders granted by this court.

Issue 6: The JR Is Procedurally Improper As Because Perbadanan Setiausaha Kerajaan Negeri Pahang Is Not Made A Party

[62] R6 argued that the JR application is procedurally improper as the fourth respondent is not a proper nor a necessary party to the proceeding, instead the Perbadanan Setiausaha Kerajaan Negeri Pahang ('PSK'), which is a material party, was not made a party to the applications.

[63] Briefly, this court disagreed that the applications should be dismissed on ground of irregularity and misjoinder as the PSK was not made a party to this proceeding.

[64] The decisions that are the subject of this review stemmed from the policy decisions of the State Authority, R3, and the Pahang State Government, R4. PSK does not and cannot act on its own volition. Its actions are subjected to the directions, instructions and policy decisions of R3 and R4. R3 and R4 being parties to this proceeding are more than sufficient to defend the impugned decisions against the applicants' action. The evidence provided to this court by R3 and R4 to substantiate the evidence of R1 and R2, and to a certain extend R5, would enable this court to understand R1-R5's case against the applications. There is simply no necessity for the PSK to be made a party to this proceeding.

Issue 7: The Relief Of A Certiorari To Quash The Award Of Lease Granted To R6 Is Premature

[65] R6 argued that the applicants' prayer for a *certiorari* to quash the lease granted to R6 to allow the implementation of the land legalisation scheme is premature and incapable of being ordered by this court.

[66] It is the finding of this court that if that forms R6's central argument, R6 should seek for itself to be struck out as a party to the proceeding. It also follows that if that is the position taken by R6, R6 does not have any locus to partake in the land legalisation scheme in any manner. That certainly cannot be the case. The State Government had made its policy decision to grant R6 the lease over the lands that covered the affected lands. R6 has the beneficial interest in the affected lands. The prayer against R6 is, therefore, correct.

[67] Even if this court decides to allow the JR, and rule that the *certiorari* against R6 cannot be ordered as R6 has not been formally granted the lease as yet, all that needed to be done by this court is not to issue the *certiorari*. That, however, does not bar the applicants to proceed their JR applications.

Part B : Appeals By The Relevant Applicants On The Dismissal Of The Substantive JR Applications

[68] I will now set out the reasons why I dismissed the JR applications.

[69] Having appraised myself with the pleadings of parties and the evidence and documents before me provided by all parties, it is without doubt that the crux of the applicants' complaints that brought about this JR are the inter-connectivity of decisions by R1-R6. This started with the decision of R3, R4 and R5 in granting the lease and land right use to R6 of a certain perimeters of the land belonging to R4, which encompassed the affected lands. That led to the decision of R1, R2 and R5 to issue the eviction notices, and also led to R5 and R6's decision to devise the land legalisation scheme under the purview of R6, with the tacit approvals of R3 and R4.

The Opening Remarks Of The Applicants' Counsel Contradicts The Applicants' Case?

[70] In his opening remarks, learned counsel for the applicants was unequivocally clear that the applicants are:

(i) not asking this court to determine the applicants' legal ownership rights over the lands;

(ii) not claiming legal ownership of the lands; and

(iii) not asking this court to ascertain doctrine of adverse possession in favour of the applicants.

[71] That being the position of the applicants, the applicants' counsel made it clear to this court that the applicants are not disputing the Federal Court decision in *Sidek Hj Mohamed* and *North East Plantation*.

[72] R6's lead counsel raised his red flag against that opening remarks. He argued that the applicants' counsel remarks ran counter to the applicants' statement made pursuant to O. 53 r. 3(2) of the Rules, particularly para. 3.1 where the applicants pleaded:

> The Applicants are all durian farmers on the Affected Lands. They are not squatters or illegal occupants of the Affected Lands.

[73] I ruled that the remarks did not contradict the applicants' case. Paragraph 3.1 of the O. 53 statement of the applicants cannot be read in isolation but together with the authoritative text of the pleading in Bahasa Malaysia. Pursuant to the National Language Acts 1963/67, particularly s. 8, and O. 92 r. 1 of the Rules of Court 2012, it is clear that the Bahasa Malaysia text of the O. 53 statement shall prevail as the English version is only a translation of the original document, which is in Bahasa Malaysia.

[74] Having read the Bahasa Malaysia version of para. 3.1 of the O. 53 statement, which reads:

> Pemohon-Pemohon adalah pekebun-pekebun atas Tanah-Tanah yang Terlibat tersebut. Mereka bukan semata-mata penduduk setinggan atau penghuni haram atas Tanah-Tanah yang Teribat tersebut.

it is clear that the applicants pleaded that they are not merely squatters or illegal occupants but they are farmers on the affected lands. The applicants are saying that they are not squatter simpliciter. They have been on the affected lands over the years with consent or permission or knowledge or acquiesced by the State Authorities, expressly or impliedly.

Are The Applicants Squatters Simpliciter?

[75] The learned counsel for the applicants made it clear to this court that the applicants do not dispute the decision of the Federal Court in *Sidek Hj Muhamad & Ors v. The Government Of The State Of Perak & Ors* [1982] CLJ 244; [1982] CLJ (Rep) 321.

[76] To recapitulate, the main applicant in that case, Sidek Hj Muhammad and his other colleagues opened up a large area of a jungle in Teluk Intan, Perak somewhere in 1950s. The area where he has been occupying for all the years had since the 1970s been redeveloped by the Perak State Government as Rancangan Seberang Perak Padi Cultivation Scheme. Sidek applied to join the Scheme but was unsuccessful. Sidek and a few others like him who were the original settlers of the area then filed a writ, asking for a declaration *inter alia*, that they are entitled in law and in equity to be in possession of their respective lots originally pioneered, opened up and occupied by them. They argued that they are entitled in law and in equity to compel the State Government to give State land to them. Raja Azlan Shah CJ (Malaya) (as His Highness then was) delivered the landmark decision of the Federal Court and held that Sidek and the other applicants cannot succeed in their action because they are squatters. Squatters have no right either in law or in equity. In fact, as illegal occupiers of the land, the Federal Court held that Sidek and the other applicants committed an offence under s. 425 of the National Land Code. It is well established that a court of equity will never assist squatters to resist an order of possession illegally acquired; it will never intervene in aid of wrong-doers.

[77] The applicants argued that the facts and circumstances surrounding their applications can be clearly distinguished with what happened in *Sidek Hj Muhammad*. The applicants argued that they are not squatters simpliciter and they are not illegal trespassers. Their reasons are simply that unlike Sidek, in their case the acts of the respondents directly or impliedly showed consent and approval for the applicants to occupy the affected lands, giving rise to reasonable expectation that the applicants would finally be issued with land titles or licence to use the affected lands.

[78] How did the applicants come to such conclusion? Whilst occupying the affected lands throughout the years, the applicants made multiple applications for land ownership, land lease and land use. They received acknowledgements by the State Authorities. They had a letter of support from the special assistant to the former Raub MP, the elected representative

for the parliamentary constituency where the affected lands are situated. There were collection of information of the farmers by R1 and R5 on various dates. There were numerous negotiations between R5 and the applicants. There was an offer by R1 to one of the applicant for "tapping rights". The applicant argued that these are evidence of permission or acquiesced by the State Authorities, expressly or impliedly by conduct, of their presence on the land over the years.

[79] The applicants relied on the Supreme Court decision in *Bohari Taib v. Pengarah Tanah & Galian Selangor* [1991] 1 CLJ 647; [1991] 1 CLJ (Rep) 48; [1991] 1 MLJ 343 and the Court of Appeal's decision in *Tekad Urus Sdn Bhd v. Penduduk-penduduk Yang Menduduki Kawasan Yang Dipanggil Desa Perwira* [2004] 2 CLJ 516 and their claims as stated in the earlier paragraph, to substantiate their case that they are not squatters simpliciter.

[80] It is my finding that the applicants' contention finds no basis in law.

[81] None of the evidence they relied upon showed an iota of recognition, approval, consent, permission, acquiesce – either expressly or impliedly, by conduct, oral or in writing – that the State Authorities allowed their presence on the land over the years. The silence on the part of the land office to respond to their letters and applications cannot be interpreted to mean there was consent. If any, the non-replies by the land office on the applicants' applications only shows a certain level of inefficiency on the part of the land office. But that per se cannot legally tantamount to consent or permission or acquiesce as such.

[82] The applicants' counsel's reliance on *Bohari* and *Tekad Urus* is totally misguided.

[83] Firstly, *Bohari* was decided on an O. 89 application, which is not the case here before me. Secondly and most importantly, in *Bohari* the Supreme Court observed that there was evidence that the Selangor State Executive Council had approved the alienation of the land of the appellants. There was also evidence that the appellants were assured by a member of the Selangor State Executive Council that the titles would be issued to the appellants in a matter of time. With that facts and evidence, the Supreme Court held that the farmers are not squatters simpliciter and summary order against them under O. 89 is not the proper procedure to be invoked to evict them from the lands in question. The Supreme Court ordered for the dispute to be resolved at a full trial. *Tekad Urus* was also a case under O. 89. The COA in *Tekad Urus* followed the principle laid down in *Bohari*.

[84] This court need only to employ the following principles laid down so succintly by the Federal Court in *Sidek Hj Muhamad & Ors* to determine the status of the applicants:

Squatters have no right either in law or in equity. ... A

Section 341 of the Code empowers the State Authority to dispossess any squatters at any time. So the limitation period does not operate against the State.

What equitable right or interest can be conjured up for the squatters who have illegally occupied State land? B

Squatters go into possession by, or as a result of, illegal occupation of State land. Illegal occupation of State land is an offence under s. 425 of the National Land Code.

It is well established that a Court of equity will never assist squatters to resist an order of possession illegally acquired; it will never intervene in aid of wrong-doers. C

We would like to say this at once about squatters.

The owner is not obliged to go to the Courts to obtain an order of possession. D

He is entitled, if he so wishes, to take the remedy into his own hands.

He can go in himself and turn them out without the aid of the Courts of law.

He can even use force, so long as he uses no more force than is reasonably necessary. E

He will not then be liable either criminally or civilly.

This however is not to be encouraged because of the disturbance which might follow but the legality of it is beyond question.

[85] I apply entirely the paragraph I cited above to the application before me. This forms the starting point of the conversation between this court and the applicants. The applicants have no legal rights. The applicants cannot succeed in their claims wherever because they are squatters simpliciter. F

[86] I take it at face value that the majority of the applicants have stayed and worked on the affected lands for over 60 years. They may have worked and stayed on the affected lands for 100 years. The length of time of their stay does not in any manner changed the fact that they are squatters. Not only that they don't have any rights, they have also committed criminal wrongdoings for so long as they remain on the land without permission of the rightful owner. This was the dictum of the Federal Court in *Sidek Hj Muhammad.* G H

[87] Again this court must repeat its earlier finding. This court had been shown efforts by the applicants to apply for land ownership and land lease but all ended up with either non-response or rejections from the State Authorities. This fact does not in any manner alter the status of the applicants as squatters and illegal occupants of the affected lands. I

[88] This court agrees with the counsel for R6 citing the Court of Appeal's decision in *Chong Wooi Leong v. Lebbey Sdn Bhd* [1998] 3 CLJ 685; [1998] 2 MLJ 644 that any correspondence and communication between the applicants and any of the respondents cannot be deemed as express or implied authorisation or consent for the applicants to occupy and use the land.

Reasonable Expectation

[89] As set out in the earlier paragraphs, the appellant argued that the intended eviction of the applicants and the planned demolishment of structures and destruction of durian trees on the affected lands are in breach of substantive legitimate expectation that the applicants would be granted lease or title or interest to the affected lands through the State Authorities' express or implied consent or acquiesce.

[90] In so doing, the respondents contravened arts. 5, 6, 8, 13 of the FC by depriving the applicants of their property in breach of law, unfairly depriving the applicants their sole means of livelihood, acquiring and use property of applicants arbitrarily without adequate compensation, and compelling the applicants to perform forced labour through the terms of the land legalisation scheme.

[91] It was my finding that all efforts and attempts by the applicants to apply for land ownership, land use and land lease which ended up with either non-response or rejections from the State Authorities do not in any manner alter the status of the applicants as squatters and illegal occupants of the affected lands. And such correspondence and communication between the applicants and any of the respondents cannot be deemed as express or implied authorisation or consent for the applicants to occupy and use the land.

[92] The applicants' claims of reasonable expectation on this reason are therefore unsustainable.

[93] This court agrees with the arguments of the learned State Legal Advisor on this issue. It is trite law that legitimate expectation cannot override express statutory provisions of the NLC. This principle was laid down by the Federal Court decisions in *North East Plantations Sdn Bhd v. Pentadbir Tanah Daerah Dungun & Satu Lagi* [2011] 4 CLJ 729; [2011] 3 AMR 792; [2018] Supp MLJ 293; [2011] 1 MLRA 207 and *YKK (Malaysia) Sdn Bhd v. Pengarah Tanah Dan Galian Johor* [2021] 8 CLJ 179 and the Court of Appeal in *Tan Bun Teet & Ors v. Menteri Sains, Teknologi dan Inovasi Malaysia & Ors* [2013] 3 CLJ 1115. In fact, the principle as laid down by these high authorities was categorically accepted by the applicants' counsel. The doctrine of legitimate expectation cannot create a right when such right does not exist but may give some form of limited relief to the

litigant if there is some unfairness or conduct which led the litigant to suffer inconvenience or damages: *Government Of The State Of Sarawak v. Lah Anyie & Ors* [2013] 6 CLJ 133; [2013] 4 MLJ 184.

[94] Based on the above reasons, it was my finding that the applicants' claim for reasonable expectation must fail.

The Land Legalisation Scheme

[95] The State Authorities' decision, through R5 and R6, to devise the land legalisation scheme could be considered as a form of relief to the applicants for the inconveniences they suffered, and such efforts was in actual fact fully in line with the principle laid down by the Federal Court in *Lah Anyie*.

[96] A critical fact that was argued by the applicants themselves and not disputed by the respondents was that in the decision-making process that resulted in the land legalisation scheme proposed by R6 to the applicants, R1-R5 played a significant role either directly or indirectly. Even if they played no role, they are fully aware of the scheme and none of them objected to the scheme.

[97] I had set out the law earlier, that as the applicants are squatters simpliciter, the State Authority need not do anything at all to compensate them in any manner. But the State Authority, through R5 and R6 had come out with the land legalisation scheme. The Scheme may appear to be commercially not viable or unfair or unscrupulous or unjust or ridiculous from the standpoint of the applicants. But the applicants must be reminded on the starting point of the conversation between this court and them – that they are squatters simpliciter. The applicants have no right to claim anything under the law to begin with.

[98] The State Authority however had decided not to abandon them nor to expel them out of the land with nothing. Instead the applicants were offered to be "partners" with the State Authority and its bodies, R5 and R6.

[99] Had the applicants embraced and accepted the land legalisation scheme, the starting point of the conversation between this court and the applicants would have been altered. For as soon as the applicants accept the scheme, they will no longer be considered as squatters simpliciter. This is so because the State Authority will confer on the applicants land use rights – in the form of short-term subleases.

[100] This court must take these facts into account as it assists me in determining the state of mind of the decision makers of R1-R6 in dealing with the applicants and in the resultant impugned decisions. R1-R6 were consensus in choosing the most humane solution, albeit totally unsatisfactory from the standpoint of the applicants.

[101] The land legalisation scheme is certainly not a perfect scheme. But, it must have been devised with the purpose, among others, to ensure that the applicants are not deprived of their life and livelihood, as expounded by the Court of Appeal in *Kerajaan Negeri Johor & Anor v. Adong Kuwau & Ors* [1998] 2 CLJ 665:

> ... It is now settled beyond argument in our jurisdiction that deprivation of livelihood may amount to deprivation of life itself and that state action which produces such a consequence may be impugned on well-established grounds. ...

[102] Having examined the terms and conditions of the scheme against the backdrop of the status of the applicants as the squatters with zero legal rights as I had explained earlier, I could not find an iota of evidence that the land legalisation scheme is tainted with *mala fide* and bad faith as claimed by the applicants.

[103] The applicants' arguments that the scheme is a form of forced labour, creating false market, creating unfair monopoly and contravened the relevant provisions of the Federal Constitution and the Competition Act is too far-fetched, misguided and infused with irrationality and unreasonableness.

[104] The applicants' contention that the State Authorities' decision to ask the applicants to deal with R6 on matters relating to the land legalisation scheme is an excessive delegation is a non-starter argument. R6 was created with the support of the Pahang State Government and the State Authority, the interests of which are represented by R5 and R6. It is a commercial arrangement best left to be dealt with by R5 and R6.

[105] As I had stated earlier, this is a significant fact to be considered by this court in determining whether R1-R6 had acted irrationally and disproportionately at any time throughout their decision-making process constituting the lease granted to R6 and the conception of the land legalisation scheme. I am fully satisfied that the answer is a resounding negative.

The Impugned Notices

[106] Not only does this court examined carefully the terms and conditions of the scheme, this court had also perused the impugned notices issued by R1, R2 and R5.

[107] Firstly, the legality of the notices cannot be questioned as it was issued consequent to the correct provisions of law.

[108] Most importantly, I find that the language of the notices could assist this court in determining whether the decision of R1 and R2 in the issuance of these impugned notices were tainted with irrationality, unreasonableness, *mala fide* and procedural improprietiness.

[109] R1 and R2 used almost similar language. The applicants were drawn clearly to their non-compliance with the relevant provisions of the NLC and Forestry Act. R1 and R2 then informed the applicants that despite the applicants having breached statutory provisions, R1 and R2 do not intend to prosecute them under those provisions. Instead, the applicants were told to take measures to pack their things and leave. The applicants were further informed that should they continue to disobey, R1 and R2 would take the next step of entering the lands – which does not belong to the applicants – to take possession of the lands and to do what the law allows R1 and R2 to do. The applicants now argued that as the timeline provided in the notices were short, that signals irrationality, *mala fide*, unreasonableness and procedural improprietiness that warrants the notices to be quashed.

[110] This court reiterates the starting point of the conversation between this court and the applicants – that the applicants are squatters simpliciter with no legal rights. The applicants counsel stated they are not here asking this court to determine that the applicants have legal ownership rights over the lands as none of the applicants are claiming legal ownership of the lands, none are exerting the application of the doctrine of adverse possession and none of the applicants are disputing the FC decision in *Sidek Hj Mohamed* and *North East Plantation*. Why is this so? Because the applicants are aware of their zero rights under the law due to their status as squatters simpliciter.

[111] With that backdrop, there was in fact no necessity for R1 and R2 to issue the impugned eviction notices. They could have just entered the land and enforce the law accordingly, in full recognition of the Supreme Court's decision in *Sidek Hj Mohamed* which I had highlighted earlier. I must repeat what Raja Azlan Shah CJ (Malaya) (as His Highness then was) said in that case:

> We would like to say this at once about squatters. The owner is not obliged to go to the Courts to obtain an order of possession. He is entitled, if he so wishes, to take the remedy into his own hands. He can go in himself and turn them out without the aid of the Courts of law. He can even use force, so long as he uses no more force than is reasonably necessary. He will not then be liable either criminally or civilly.

[112] But R1 and R2 chose not to do so. Instead R1 and R2 took the soft approach by issuing the notices, again in full recognition of what was said by Raja Azlan Shah CJ in *Sidek Hj Mohamed*:

> This (use of force) however is not to be encouraged because of the disturbance which might follow but the legality of it is beyond question.

[113] The final words in that decision guides this court now. Even if R1 and R2 decides to dispense with the notices and proceeded to enter land and forcefully to turn the applicants out of the land, the legality of such action is beyond question, how could this court now come to the applicants' aid to rule that they can legally question the decision-making process of the notices?

[114] All counsels agreed on the legal position governing JR now as laid down by the Federal Court in *R Rama Chandran v. Industrial Court Of Malaysia & Anor* [1997] 1 CLJ 147; [1997] 1 MLJ 145 which permits this court not only to scrutinise the decision-making process but also the decision itself. But the scrutiny of the decision itself as laid down in *R Rama Chandran* is not free-fall and cannot be exercised arbitrarily. This has been explained further in numerous decisions including the Federal Court's decision in *Petroliam National Bhd v. Nik Ramli Nik Hassan* [2003] 4 CLJ 625; [2004] 2 MLJ 288, where it held that the reviewing court may scrutinise a decision on its merits but only in the most appropriate of cases and not every case is amenable to the *R Rama Chandran* approach.

Conclusion

[115] It is settled law that this court will not interfere with a decision of the respondents unless it can be established that the decision is infected with errors of law.

[116] Having examined the impugned decisions, and in the light of all the findings I made as I had set out in the preceding paragraphs, it is my finding that the applicants failed to show that in making the impugned decisions the respondents had:

(i) asked itself the wrong questions;

(ii) considered irrelevant matters;

(iii) failed to consider relevant matters;

(iv) failed to apply the proper principle(s) of law; and/or

(v) reached a decision that was so perverse that no reasonable tribunal under similar circumstances would have reached it.

[117] Based on the above considerations, it is my finding that:

(i) the decision by the Pentadbir Tanah Daerah Raub (R1) to issue the eviction notices on land belonging to R4 located within the area of Sg Chalit, Sg Klau, Sg Ruan, and Tranum in Mukim Gali, Daerah Raub and within the area of Tras, Mukim Tras, Daerah Raub, pursuant to ss. 425 and 426A of the NLC;

(ii) the decision by the Pengarah Perhutanan Pahang (R2) to issue the eviction notices on land within the Forest Reserve pursuant to s. 32 National Forestry Act 1984;

(iii) the decision by the State Authority (R3) on 26 April 2020 to award to R6 a lease and land use rights of 5,357.2 acres of land in Raub District (which include the land that are the subject of the notices of eviction); and

(iv) the decision by the State Authority (R4) as announced by the YAB Menteri Besar and subsequently by representatives of R6 on the land legalisation scheme which involves the said award of the lease and land use to R6, subleasing of the relevant land to the applicants and a specific arrangements on the selling of durians by the applicants to R6, and the terms therein; and

(v) the decision by R5 to issue notice of eviction dated 1 December 2020 with respect to land under title PN10972 Lot 17362,

were not in any manner tainted with illegality, irrationality or *mala fide*. There was no improprietiness or unreasonableness in the decision and the decision-making process when the notices were issued. On the contrary they were entirely in full compliance with the requirements of the applicable law.

[118] On the above reasons, the applicants' JR applications are dismissed and I deny all orders prayed by all of the applicants in both actions, with costs.

[119] I wish to end with the quotation of Raja Azlan Shah's decision in *Sidek Hj Muhammad*:

> It cannot have been intended by Parliament in enacting the National Land Code that every person who was in need of land should be able to sue the Government for it or to take the law into his own hands for the purpose. So, the Courts must, for the sake of law and order, take a firm stand. We can sympathise with the plight in which the appellants find themselves. But we can go no further. They must make their appeal for help elsewhere, not to us.

[120] So I order.